IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

CHAMBER SUMMONS NO. 1695 OF 2004
WITH
CHAMBER SUMMONS NO.1069 OF 2005
IN

EXECUTION APPLICATION NO. 161 OF 2001

IN

SUIT NO. 2191 OF 1998.

Ajitsingh Harnamsingh ..... Plaintiff.

versus

Dalipsingh H. Bali ..... Defendant.

And
Dr. Vasant A. Khatav and anr. ...Obstructionist.

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Mr. G. B. Kedia Amicus curiae for plaintiff.
Plaintiff present in person.
Ms. R. Sayyed i/b. Vinod Mistry & Co. for defendant
Mr. A.C. Tamhane i/b. M/s. Tamhane & Co. for
Applicant/obstructionist.

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CORAM ; A.M. KHANWILKAR, J.

DATED; 31ST AUGUST, 2005

P.C.;

1. Heard Mr. Tamhane for the obstructionist and Mr. Kedia the learned Amicus Curiae for the plaintiff. The Plaintiff is present in the court. At the end of the hearing he was given an option to address the court if he so desired. He made it clear that for the order that I propose to pass, he had no submissions to offer.

2. The controversy in this case arises out of the decree passed by this court on 6th November 2000 in Suit No.2191 of 1998. The said suit was filed by the Plaintiff against one Dalipsingh on the assertion that he is the owner in respect of flat situated in Co-operative Society called Arunodaya Shopping Centre Co-op.Housing Society Limited at Market Lane, Borivli (West); and the plaintiff became the owner thereof under registered agreement dated 1-12-1995. The suit which was filed by the plaintiff for declaration and permanent injunction came to be decreed ex-parte. In execution of the said decree warrant of possession was issued, which was obstructed by the applicants Dr. Vasant and Mrs. Vasant. According to them, they are in possession of the disputed property having purchased from the original owner. Besides they have been admitted as member of the society and the shares have been transferred in their name. Warrant of attachment was wrongly issued in respect of the disputed premises. In this background the abovenamed applicants moved Chamber Summons No. 943/01 for setting aside of attachment. The Plaintiff on the other hand filed separate Chamber Summons being No.771/01 for the issuance of warrant of possession against the obstructionist. The Chamber summons taken out by the

applicants came to be allowed by a detailed judgment and order and the Chamber Summons taken out by the Plaintiff for removing obstruction came to be rejected.

3. The contentions which are now raised on behalf of the Plaintiff in the present proceeding, in my opinion, have been already considered and answered against him in the decision of Justice J.A.Patil dated 10-1-2002. It is not in dispute that against that decision the plaintiff had carried the matter in appeal, which appeal came to be dismissed on March 22, 2002, being appeal No. 248 of 2002. The order passed in the chamber summons taken out by the applicant/obstructionists has not been challenged and has been allowed to become final.

4. In this background, it is submitted on behalf of the applicants/obstructionist that the chamber summons taken out by the Plaintiff as C.S. No. 1695/04 for removal of obstrutions cannot be entertained in law. I find substance in this submission. There may be any other remedy available to the Plaintiff. Accordingly, the chamber summons taken out by the Plainitff ought to fail. Mr. Kedia who has appeared as Amicus Curiae submits that the court may consider the issue as to whether the applicants/obstructionists have any right,

title or interest in respect of the disputed premises. This submission is made relying on the original agreement now produced on behalf of the applicants, which would indicate that the same has not been signed by Smt. Sulu Trimbak Deshmukh. In otherwords, it is contended that the title of the applicant/obstructionists in respect of the disputed premises is defective. Even if it is so, this contention cannot be gone into, in view of the earlier orders passed by this court rejecting similar prayer made on behalf of the judgment creditor. Accordingly the chamber summons taken out by the Plaintiff being 1695/04, deserves to be rejected.

5. As that chamber summons is rejected, it is unnecessary to go into any other issue. In view of this order, the counsel for the applicants submits that he may be permitted to withdraw the chamber summons taken out by them being C.S.No. 1069/05 with liberty to take out appropriate proceedings for the same reliefor other such reliefas may be advised, as and when occasion arises.

6. Accordingly, the following order is passed

a) Chamber Summons 1695/04 is dismissed.

b) Chamber Summons 1069/05 is dismissed as withdrawn with liberty to the applicants/obstructionists to take recourse to remedy as may be ordered including to seek same relief as and when occasion arises.

7. The counsel for the applicants/obstructionists makes statement on instruction that they will not create third party rights or interest or part with possession of the disputed premises for a period of three months from today to enabling the Plaintiff to take out appropriate proceedings and seek necessary interim orders as may be advised and permissible by law. That assurance is accepted.

8. It is once again made clear that it will be open to the plaintiff to take recourse to such remedy as may be permissible by law.

9. The court expresses thanks to Mr. Kedia for having rendered able assistance to the court to espouse the cause of the Plaintiff who was appearing in person.

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